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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,083	10/31/2003	Wesley Scott Ashton	ASHTON0009	9725
7590		03/02/2006	EXAMINER	
Wesley Scott Ashton		RODRIGUEZ, RUTH C		
8549 Black Foot Court		ART UNIT		
Lorton, VA 22079		PAPER NUMBER		
		3677		

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/697,083	Applicant(s) ASHTON, WESLEY SCOTT	
	Examiner Ruth C. Rodriguez	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-31, 36 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-31, 36 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21, 28, 31 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Denny et al. (US 6,047,209).

A method of dispensing a substance into a mouth wherein the substance is selected from a group consisting of a breath freshener, a medication and a flavoring agent (Abstract). The method comprises the steps of: (a) providing a mouth and tongue stud (103,201) including a means for dispensing a substance formed in a portion of the stud (Abstract). The means of dispensing a substance contains the substance (Abstract); (b) mounting the stud in a fistula of a wearer's tongue or in the wearer's lip (Fig. 3); and (c) dispensing the substance into the wearer's mouth (fig. 3).

The substance is disposed into the wearer's mouth by dissolving the substance over time in the wearer's saliva (once the substance is dispensed upon application it will dissolve over time).

Regarding claim 31 having similar limitations to claim 21, the rejection of claim 21 serves to reject claim 31 since it has similar limitations and Denny discloses that the substance is a medication (C. 3, L. 29-45).

A method of dispensing a substance into a mouth wherein the substance is a medication. The method comprises the steps of: (a) providing a mouth and tongue stud including a means for dispensing a substance formed in a portion of the stud (Abstract). The means of dispensing a substance contains the medication (Abstract); (b) mounting the stud in a fistula of a wearer's tongue or in the wearer's lip (Fig. 3); and (c) dispensing the substance into the wearer's mouth (fig. 3). The stud comprises a bar (103,201) having ends, a first end member (tip of 13,201 as shown in fig. 3) is attached to one end of the bar and a second end member (404) is attached to an other end of the bar (Figs. 1-5). The bar is made of metal (C. 4, L. 43-46).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-27, 29, 30 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denny.

Denny discloses a method for dispensing a medication in accordance with the steps mentioned above for the rejection of claims 21, 28, 31 and 37. Denny discloses the use of salve, hydrogen peroxide, polysporin and other antibiotic or cleansing fluid as the medication. Denny fails to disclose that the substance comprises a breath freshener or a flavoring agent or a breath freshener mixed with a flavoring agent or a medication mixed with a breath freshener or a medicine with a flavoring agent. However, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention that the substance can comprises a breath freshener or a flavoring agent or a breath freshener mixed with a flavoring agent or a medication mixed with a breath freshener or a medicine with a flavoring agent since it is well known in the art of dispensing medicines into a wearer's mouth to use breath freshener or flavoring agents in combination with the medication in order to provide an attractive flavor to the medicine being disposed. Especially, since the flavor of the medication cause nausea.

Response to Arguments

5. Applicant's arguments with respect to claims 21-31, 36 and 37 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Warren, Jr. (US 3,754,332), Lariccia et al. (US 3,943,928), Cournut et al. (US 4,020,558), Harris et al. (US 4,551,329), Garay et al. (US 4,861,268), Stanley et al. (US 5,855,908), Denny et al. (US 6,047,209), Katz (US 6,326,022 B1) and Levy et al. (US 6,592,860) are cited to show state of the art with respect to devices used to deliver a medication or other substance into a wearer's mouth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C. Rodriguez whose telephone number is (571)

272-7070. The examiner can normally be reached on M-F 07:15 - 15:45. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez
Patent Examiner
Art Unit 3677

rcr
February 21, 2006


ROBERT J. SANDY
PRIMARY EXAMINER